



## **Case Summary**

Kevin Cardwell appeals the denial of his motion for jail time credit. We affirm.

### **Issue**

The sole issue for our review is whether the trial court erred in denying Cardwell's motion for jail time credit.

### **Facts**

In 1993, Cardwell pled guilty to one count of child molesting as a Class B felony, and the trial court sentenced him to twenty years. He filed a petition for post-conviction relief in 1998. The post-conviction court denied the petition, and this court dismissed Cardwell's appeal of the denial. Cardwell has since filed several successive petitions for post-conviction relief, all of which have been denied. He has also filed motions for jail time and educational credit as well as a motion to correct erroneous sentence, all of which have been denied.

In May 2006, Cardwell filed a motion for jail time credit wherein he apparently argued that although he was awarded credit for 342 actual days served prior to sentencing, the trial court's judgment did not include 342 days of good time credit. In its order denying the motion, the trial court pointed out that the record shows that Cardwell was correctly awarded 342 actual days served prior to sentencing in the court's sentencing order and abstract of judgment. Cardwell appeals the denial of his motion.

## Analysis

The sole issue before this court is whether the trial court erred in denying Cardwell's motion for jail time credit.<sup>1</sup> Specifically, Cardwell claims that although the trial court gave him credit for 342 days of actual time served, the court failed to expressly designate the additional 342 days that he earned for good time credit.

At the outset we note that Cardwell did not present his pre-trial credit time argument by way of a petition for post-conviction relief. Rather, in essence, he filed a motion to correct erroneous sentence under Indiana Code Section 35-38-1-15, which provides as follows:

If the convicted person is erroneously sentenced, the mistake does not render the sentence void. The sentence shall be corrected after written notice is given to the convicted person . . . . A motion to correct erroneous sentence must be in writing and supported by a memorandum of law specifically pointing out the defect in the original sentence.

In Robinson v. State, 805 N.E.2d 783 (Ind. 2004), our supreme court clarified the circumstances under which it is proper for the defendant to raise sentencing errors in a motion to correct erroneous sentence. Specifically, the court held that a motion to correct erroneous sentence may only be used to correct sentencing errors that are clear from the face of the judgment. Id. at 787. Claims that require consideration of the proceedings before, during, or after trial may not be presented by way of a motion to correct erroneous sentence. Id.

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<sup>1</sup> This was the only issue before the trial court. An issue raised for the first time on appeal is waived for appellate review. Stainbrook v. Low, 842 N.E.2d 386, 396 (Ind. Ct. App. 2006), trans. denied.

Here, Cardwell's contention raises an alleged calculation error that requires consideration of matters outside the sentencing judgment. Following Robinson, Cardwell's claim may not be presented by way of a motion to correct erroneous sentence. The trial court did not err in denying his motion. See Murfitt v. State, 812 N.E.2d 809, 811 (Ind. Ct. App. 2004) (holding that the trial court did not err in denying Murfitt's motion for jail time credit where claim raised matters outside the face of the sentencing judgment and could not be presented by way of a motion to correct erroneous sentence).

We further note that even if Cardwell had properly raised his sentencing claim, the claim would fail. In Robinson, 805 N.E.2d at 792, our supreme court also adopted an appellate presumption that "sentencing judgments that report only days spent in presentence confinement and fail to expressly designate credit time earned shall be understood by courts and by the DOC automatically to award the number of credit time days equal to the number of pre-sentence confinement days." The court then concluded that because the omission of designation of the statutory credit time entitlement is thus corrected by this presumption, such omission may not be raised as an erroneous sentence. Id. Here, Cardwell has failed to rebut this presumption.

Lastly, Cardwell's appendix includes a June 23, 2006, memo from the DOC to Cardwell regarding his jail time credit. Specifically, the memo advised Cardwell that his jail time credit was calculated correctly and there was no error in how much he was awarded. We find no error here.

### **Conclusion**

The trial court did not err in denying Cardwell's motion for jail time credit. We affirm.

Affirmed.

BAILEY, J., and VAIDIK, J., concur.